

STATE OF CALIFORNIA
BEFORE THE COMMISSION ON JUDICIAL PERFORMANCE

INQUIRY CONCERNING
JUDGE JAMES I. AARON,

NO. 164.

NOTICE OF
FORMAL PROCEEDINGS

To James I. Aaron, a judge of the former Fresno County Justice Court, former Kingsburg-Riverdale Judicial District from January 8, 1979, to December 31, 1993, a judge of the Fresno County Municipal Court from January 1, 1994, to June 30, 1998, and a judge of the Fresno County Unified Superior Court from July 1, 1998, to the present:

Preliminary investigation pursuant to Rules of the Commission on Judicial Performance, rules 109 and 111, having been made, the Commission on Judicial Performance has concluded that formal proceedings should be instituted to inquire into the charges specified against you herein.

By the following allegations, you are charged with willful misconduct in office, conduct prejudicial to the administration of justice that brings the judicial office into disrepute, and improper action within the meaning of article VI, section 18 of the California Constitution providing for removal, censure, or public or private admonishment of a judge or former judge, to wit:

COUNT ONE

During approximately 1998 and 1999, you were actively involved with Debbie Alliji, Kenneth Roper and James Baczynski in promoting an investment scheme involving Westminster Financial Associates. Various persons were induced to invest substantial sums of money based on promises of safety of capital and extremely large and quick profits. Despite knowing or having reason to believe that the investment scheme was fraudulent, you solicited investors to it, promoted it, lent the prestige of judicial office to it, and profited financially from it.

- A. During the fall of 1998, Fresno attorney David Mugridge made a court appearance before you on behalf of a client in a criminal matter. You had no prior personal relationship with Mugridge. Immediately following the hearing involving Mugridge's client, you requested that Mugridge meet with you in your chambers. There, you engaged him in a discussion concerning your marital problems and asked him for his opinion as a fellow Christian regarding divorce and other related personal matters. During this meeting, you and Mugridge prayed together in your chambers.
- B. Within a few weeks of that meeting in chambers, Mugridge again appeared before you on behalf of a client in a criminal matter. You failed to recuse yourself or disclose your prior meeting in chambers with Mugridge. Immediately following that appearance, you again requested that Mugridge meet with you in your chambers, where you again relayed to Mugridge in an emotional manner details concerning your marital problems and your concerns about the reactions of members of your church to those problems. You and Mugridge again prayed together in chambers.

- C. On a third occasion during the fall of 1998, Mugridge appeared before you on behalf of a criminal defendant. You failed to recuse yourself or disclose your prior meetings in chambers with Mugridge. On that day, Mugridge's client entered a plea of guilty; sentencing was deferred to another date. At the conclusion of the hearing, you again requested that Mugridge accompany you into your chambers. While wearing your judicial robe in chambers, you told Mugridge that you knew that it was inappropriate for you to solicit money from him. Immediately thereafter, after noting that both you and Mugridge were Christians, you advised him of what you characterized as a favorable investment opportunity which could help him meet his goals and for which you were seeking investors. You described the investment in the general terms that it was safe and that it would yield quick and large returns. You suggested that Mugridge invest \$50,000. At the time of this solicitation by you, Mugridge was a member of the panel maintained by the Fresno County Superior Court for appointments to represent criminal defendants in capital and special circumstances cases; as such, Mugridge received appointments and compensation from the court on which you served.
- D. Approximately three weeks after the meeting just described, Mugridge again appeared before you in connection with the same case. You failed to recuse yourself or disclose your prior meetings in chambers with Mugridge. Immediately following the hearing, you again requested that Mugridge accompany you into your chambers. While wearing your judicial robe in chambers, you told Mugridge that you assumed he had considered the investment you previously had presented to him. You

told him that it was such a good deal that you wanted only Christians and your friends involved in it and you inquired whether Mugridge was really interested in the investment opportunity. At the time of this further solicitation by you, the court case on which Mugridge had just appeared was still pending in your court.

- E. Subsequently, during the period shortly prior to Thanksgiving 1998, you made a number of telephone calls to Mugridge at his home and office inviting him to come to one or more meetings of prospective investors, and to meet Ken Roper, whom you claimed was a friend and portrayed as a banker/investment advisor.
- F. Between approximately October-December 1998, you and Roper led a series of meetings, including meetings at a tobacconist shop in the Manchester Center in Fresno, access to which was through you and at which you acted as host. These meetings were attended by Mugridge and other prospective investors.
- G. At one or more of these meetings, you made affirmative representations of fact to induce individuals to invest in Westminster Financial. These representations included that you had prior business experience with the other principals in the investment being promoted and that you could and did vouch for their integrity, that any principal amount invested would be guaranteed by insurance, and that very large returns would be realized very quickly. At the time you made such representations, you knew they were not true or you had no reasonable ground for believing them to be true.

- H. You further promoted the investment by pointing out at one or more of these meetings, and in other conversations with prospective investors, that prospective investors included David Mugridge, whom you identified as an attorney, your son David Aaron, a friend of David Aaron whom you also identified as an attorney, and other persons whom you represented to be fellow Christians and/or long-time friends or acquaintances of yours or of your “colleague,” Roper.
- I. You further promoted the investment at one or more of these meetings by permitting references to you as a judge and your involvement in the plan as an indicator of the soundness of the investment.
- J. You further promoted the investment by suppressing or otherwise failing to make disclosures of material facts at these meetings and during other conversations with prospective investors, some of whom invested in reliance on your non-disclosures. You did not disclose:
1. That you personally were not investing in what you were promoting;
 2. That you had entered into agreements to split commissions and/or fees with others connected with the Westminster Financial scheme, specifically Roper and Alliji; these agreements included payments to you consisting of a percentage of the dollar amounts of the investments that you procured;
 3. That you would be entitled to a percentage of any profits realized by the investors.
- K. At one of these promotional meetings, in or about December 1998, you recommended to the prospective investors (with no advance discussion by you with Mugridge), that your “friend Dave Mugridge” was a lawyer and would be an appropriate person to receive and hold the actual

investment funds from the various investors prior to transmitting them to a designated recipient on behalf of Westminster Financial Associates. As a result, in early-December 1998, Mugridge executed certain documents in connection with the investment in the Westminster Financial Associates scheme by a group called “ABC Escrow,” and received investment funds from the other investors who had been solicited by you (hereafter collectively referred to as “the Fresno investors”). Mugridge wire-transferred approximately \$197,000 of his and the other Fresno investors’ funds to an account maintained by Baczynski in Chicago that was touted, including by you, as an escrow account maintained by an attorney.

- L. In approximately April 1999, you received a payment of \$20,000 from Debbie Alliji in connection with Westminster Financial. You accepted this money even though you knew that the Fresno investors had not received any of the profits that you had promised them on their investments, and even though you had no reasonable basis for believing that they ever would receive such profits. You have continued to retain the \$20,000 despite knowing that Alliji, Roper, and Baczynski have all been convicted at trial of or plead guilty to federal criminal offenses and sentenced to lengthy prison terms for their roles in Westminster Financial, described by United States District Judge Oliver Wanger who presided over the trial as a “classic Ponzi scheme.”

Your conduct was in violation of the Code of Judicial Ethics, canons 1, 2A, 2B(2), 3B(7), 3E, 4A and 4D(1).

COUNT TWO

Your involvement in the Westminster Financial investment scheme (count one) included providing false and/or misleading assurances to investors and otherwise dissuading them from complaining to government authorities, including as follows:

- A. When the profits that had been promised to the Fresno investors, including by you, were not forthcoming in late-December 1998 or January 1999, Mugridge made various efforts to obtain the promised funds. In that connection, around January 1999, Mugridge began making telephone calls to you and the others involved in the Westminster Financial scheme, and had at least one meeting with you and Roper.
- B. In January or February 1999, Mugridge wrote a letter to his fellow Fresno investors making reference to “getting a run-around” by you and the others involved in the Westminster Financial scheme. Shortly thereafter, you telephoned Mugridge and told him that Roper was very displeased by the letter. You also relayed a threat that you said had been made by Roper, which was that Roper wanted to assault or beat up Mugridge. You added words to the effect that you “just wanted [Mugridge] to know” of Roper’s threat. Mugridge feared for his personal safety as the result of your relaying the threat to him.
- C. In October 1998, Debbie Alliji was indicted for activities in connection with an investment scheme centered in the Sacramento area, which was similar to the Westminster Financial scheme.

- D. The Fresno investors received a partial payment from Westminster Financial during or about February 1999. Mugridge continued his efforts to obtain the promised profits on the investments until summer 1999. His efforts included numerous telephone contacts and meetings with you, including at least one meeting in your chambers.
- E. Starting about April 1999, when Mugridge had increasing difficulty communicating directly with either Roper or Alliji, you became the primary contact and conduit for information concerning Westminster Financial. You repeatedly assured Mugridge that the Fresno investors' investments ultimately would produce the promised large returns, and counseled him to be patient. When you made such assurances to Mugridge, you knew them not to be true or you had no reasonable basis for believing them to be true.
- F. In approximately June 1999, you learned that federal authorities, including the Internal Revenue Service and the United States Attorney, were conducting a criminal investigation concerning Westminster Financial. You were interviewed by representatives of those agencies, and on their behalf you made clandestine recordings, by means of a wiretap on your chambers telephone, of conversations between you and Roper.
- G. Subsequently, in approximately late-summer 1999, when Mugridge told you that he was considering complaining to governmental authorities concerning Westminster Financial, you urged him not to, stating to the effect that the "Feds" were going to let Westminster Financial "roll-over one time," which would result in the Fresno investors realizing a profit

on their investments, and that any complaint to the authorities would jeopardize the “roll-over” and profit-realization. You knew that these representations were not true, and were made by you to obstruct or delay the federal investigation into Westminster Financial.

H. In approximately spring 1999, Curtis Somoza invested \$125,000 in Westminster Financial; he had been solicited to invest by someone other than you. Around the summer of 1999, Somoza told Baczynski that he intended to complain to the authorities concerning Westminster Financial; Baczynski referred Somoza to you, and thereafter:

1. In approximately late-July 1999, you participated in a telephone conference call between at least you, Baczynski and Somoza, during which you advised Somoza not to go to the authorities and stated to the effect that if he did so, the authorities would freeze all the money and Somoza would never have a chance to get his money back.
2. During approximately July through October 1999, you participated in a series of telephone calls with Somoza, including calls that you initiated from your chambers. Throughout this period, you continued to urge Somoza to be patient, assuring him that he would recover at least his capital investment, and urging him not to complain to the authorities. These representations were made by you to obstruct or delay the federal investigation into Westminster Financial. The telephone contacts between you and Somoza occurred on nearly a daily basis, with multiple calls on certain days, and continued until the time of the indictments of Alliji, Roper and Baczynski in or about mid-October 1999.

Your conduct was in violation of the Code of Judicial Ethics, canons 1, 2A, 2B(2), 4A and 4D(1).

COUNT THREE

During approximately 1998 and 1999, you engaged in frequent telephone conversations at the court with Roper, Baczynski and Alliji regarding the Westminster Financial scheme (count one); you had instructed court staff that all calls to you from these persons were to be put through to you either on the bench or in your chambers. You failed to give your judicial duties precedence over these personal matters. These calls interfered with the performance of your judicial duties and with court staff's performance of their duties.

Your conduct was in violation of the Code of Judicial Ethics, canons 1, 2A, 3A and 4A(3).

COUNT FOUR

In approximately 1999, you told Fresno attorney David Mugridge that you were having financial problems and that your residence was being foreclosed upon, and asked him to make a personal loan to you. At the time of this solicitation by you, Mugridge was an attorney who appeared before you in court and was a member of the panel maintained by the Fresno County Superior Court for appointments to represent criminal defendants in capital and special circumstances cases; as such, Mugridge received appointments and compensation from the court on which you serve. After Mugridge declined your request for a loan, you asked him for a referral to a banker or someone else who might be able to help you prevent the foreclosure of your residence. Mugridge referred you to Scott Leonard, a Fresno mortgage broker, and you asked Mugridge to put in a

good word with Leonard on your behalf. In approximately 1999, you asked Leonard for a private loan of \$300,000, which Leonard declined to make.

Your conduct was in violation of the Code of Judicial Ethics, canons 1, 2A, 2B(2), 4A and 4D(1).

COUNT FIVE

You have consistently avoided your financial obligations. In doing so you have written worthless checks, made misrepresentations, made false promises, failed to disclose material information, failed to communicate with your creditors, and otherwise engaged in delaying tactics.

A. You have consistently failed to make payments required under the terms of loan contracts, secured by deeds of trust on your personal residence, resulting in the commencement of numerous foreclosure proceedings respecting your residence, including during June 1991, August 1991, January 1995, February 1995, May 1995, December 1996, January 1997, April 1997, May 1997, November 1997, December 1997, March 1998, December 1999 and April 2000.

B. 1. You failed to pay when due personal property taxes on your personal airplane for fiscal years 1992-1993, 1993-1994, 1994-1995 and 1995-1996. The County of Fresno was required to commence legal action against you in 1997 in Fresno County Superior Court (case No. 580692-2) and was required to levy execution on judgment in order to obtain payment of the delinquent taxes, penalties and costs.

2. You failed to pay when due personal property taxes on your personal airplane and your personal boat for fiscal year 1997-1998. The County of Fresno was required to commence legal action against you

in 1999 in Fresno County Superior Court (case No. 626003-8) and was required to levy execution on judgment, including garnishing your judicial salary, in order to obtain payment of the delinquent taxes, penalties and costs.

3. You failed to pay when due personal property taxes on your personal boat for fiscal years 1998-1999 and 1999-2000.

C. On or about July 16, 1996, you and your then-wife Wanda L. Aaron borrowed \$50,000 from Phillip R. and Norma J. Bates, at 2% interest per month, due in 90 days, and signed a promissory note agreeing to repay in accordance with those terms. The note was secured by a third deed of trust on your residence property. As further ostensible “security” for the loan, you gave a \$50,000 check dated July 16, 1996, to the creditors’ attorney for him to hold; however, there were insufficient funds in your bank account at the time. You made no payments of either principal or interest when due.

1. During August 1996 – one month after incurring the Bates’ debt – you defaulted on the loan secured by the second deed of trust on your residence. In October 1996, you also defaulted on the loan secured by the first deed of trust on your residence. Notices of default were recorded in December 1996 and January 1997, and trustee’s sales were noticed for April 1997.
2. During the period from approximately November 1996 through July 1997, you made a series of assurances and/or promises to the Bateses or their counsel that repayment was forthcoming, and did so for purposes that included inducing them to not take legal action on the debt.

3. On approximately March 7, 1997, you tendered a check for \$54,000 payable to “Phil Bates” in purported satisfaction of the principal and accrued interest owing under the July 1996 note. There were insufficient funds in the account on which the check was drawn to cover the check, which you knew or should have known.
4. On approximately March 14, 1997, you forwarded to Bates and his counsel a letter on the letterhead of Republic Mortgage in which the company president stated that a \$370,000 loan to you had been delayed but was a “virtual certainty for the week of March 31.” You added a handwritten note to the letter as follows: “Phil – Sorry about the delay. Please don’t be upset – It is going to happen. For your trouble, I will add 100.00 per day to the \$54,000 until I am funded. Thanx. JA”.
5. On July 29, 1997, the Bateses sued your wife in Fresno County Superior Court (case No. 594251-1) for breach of contract under the 90-day note of July 1996. In approximately March 1998, you refinanced your residence and obtained a new first loan of \$266,000, the terms of which required the subordination of the deed of trust securing the Bates’ note. In connection with the subordination, a payment of \$5,000 was made to the Bateses out of the proceeds of the new loan, and the lawsuit was dismissed without prejudice on approximately April 6, 1998.
6. During 1998, you attempted to renegotiate the terms of the July 1996 note, whereby you proposed to the Bateses that the note be rewritten at 14.5% interest from July 1996 to July 1998. You prepared a written proposal for paying off the recalculated balance either in a lump sum on July 16, 1998, or in monthly installments of “\$1,000/month until refi at lower rate. Refi in one year is already set

up.” The representation that a refinancing had been prearranged for a year in the future was false; you knew it was false or that there was no reasonable basis for believing that such refinancing had been prearranged.

7. Other than the payment of \$5,000 in approximately March 1998, you made no payments to the Bateses. On or about October 11, 2000, the Bateses sued you in Fresno County Superior Court (case No. 00CE CG10845) for breach of contract under the original note, alleging \$50,000 principal and \$98,000 accrued interest owed. You were served with the summons and complaint in approximately February 2001 and you did not file any responsive pleading; a default was entered on June 14, 2001.

D. On approximately April 24, 1997, you entered into a written agreement with William Van Beurden, a businessman in Kingsburg, to borrow \$10,500 for 90 days at 10% interest, from his company, Van Beurden Insurance Services, Inc. Two weeks later, on approximately May 8, 1997, you entered into a further written agreement with Van Beurden Insurance Services, Inc. to borrow an additional \$26,500 for 75 days at 10% interest; you added to the May 8 note that it was “to be secured with Deed of Trust on ... [your personal residence].” You failed to disclose to Van Beurden that as of that date, your residence was encumbered by three deeds of trust, all of which were in default, and that the holders of both the first and second deeds of trust had recorded notices of trustee’s sales of your residence and thus, there was no interest to use to secure the loan.

1. You made no payments of either principal or interest on either loan from Van Beurden, and did not secure the second loan with a deed of trust on your residence. After efforts at collection by Van

Beurden were unavailing, Van Beurden Insurance Services, Inc. commenced a lawsuit against you in November 1998 in Fresno County Superior Court (case No. 622094-1) for breach of contract for the nonpayment under the two notes, and for constructive trust based on alleged fraud on your part. You did not file a responsive pleading and made no appearance at any time.

2. On approximately March 13, 1999, you and Van Beurden signed an agreement by which you stipulated to a judgment being entered in case No. 622094-1 on March 31, 1999, for the principal and interest and court costs unless prior thereto you made a \$20,000 payment, in which case the stipulated judgment would be deferred until May 15, 1999, at which time if the remaining balance had not been paid, judgment could be entered, less any payments previously made. You made no payments.
3. On approximately August 12, 1999, you faxed a handwritten letter to Van Beurden, proposing a meeting on August 24, 1999, and stating that “we will resolve this, in that on that day I should have a substantial payment for you, if not the full amount.” You requested a one-week postponement of the status conference “to the 25th ... to insure that I have done this.” You made no payments.
4. On December 15, 1999, a default judgment was entered against you in case No. 622094-1, in the amount of \$45,677.61, together with interest at 10%. The judgment remains unsatisfied in the full amount.

- E. On or about April 19, 1998, you purchased from Roland Corporation U.S. (hereafter “Roland”) a piano for \$3,620 plus tax, paying \$500 down. Within 48 hours of the purchase, you rescinded the transaction;

the seller voided your down payment check. You retained the piano, however.

1. From May through December 1998, Roland representatives made repeated unsuccessful attempts to contact you to arrange for you to return the piano.
2. On approximately December 17, 1998, Roland sent you a written proposal offering a 30% discount off the original purchase price, conditioned on you paying the full reduced balance (i.e., \$2,534 plus tax) by December 28, 1998. You did not respond to the proposal, yet continued to retain the piano.
3. Roland reiterated its 30% discount price in a letter to you of January 22, 1999, stating that you either needed to pay for the piano or return it. You did not respond to the letter, but continued to retain the piano.
4. Roland representatives attempted to resolve the matter on numerous occasions between February and June 1999. On July 2, 1999, you left a phone message with a Roland representative stating that you were buying the piano and would send a check for the full balance owing.
5. On approximately July 8, 1999, you sent a personal check in the amount of \$2,730.39 dated that day to Roland with a handwritten note directing Roland to negotiate the check on your payday, July 31. You added, "I am going to delay my Aug 1st mortgage payment of \$3,023.00 to pay for the piano." When Roland attempted to negotiate the check at the beginning of August 1999, it was returned on two successive occasions for "non-sufficient funds."

6. You explained to a Roland representative that your July 8 check had bounced because your mortgage lender had been paid. However, you did not make a mortgage payment in either July or August 1999.
7. On approximately August 23, 1999, you promised in a letter to Roland to send a cashier's check for the full balance owing, plus \$20 as reimbursement for bank charges for returning your personal check twice. Instead, on or about September 2, 1999, you sent a cashier's check for \$1,000 with a note that you would send the balance "on Friday" via overnight mail. Instead, on or about September 3, 1999, you sent a cashier's check for \$100 with a note stating, among other things, that it was all you "could scrape together today."
8. On approximately October 27, 1999, Roland filed a small claims action against you in Fresno County Superior Court (case No. S99905067-5) for the balance owing after the 30% discount and the partial payments of \$1,100, or \$1,650.39. A copy of the summons and complaint was served on you by certified mail, but you failed or refused to accept service. The trial date was continued to January 15, 2000, and you were personally served with the summons and complaint on approximately December 6, 1999.
9. You telephoned a representative of Roland on approximately January 10, 2000 – five days before the continued trial date – and advised that any judge assigned to the case would be required to disqualify himself or herself once he or she realized you were the defendant, and that it would require 30-60 days for an outside judge to be appointed to hear the matter. You then stated that you had sold some jewelry and stock, generating \$1,000, and inquired whether Roland was firm as regards the balance owing. When you were advised that the price was firm, you asked that a representative of

Roland meet you in your chambers on January 14, 2000 – the day before trial. At that meeting, you presented a cashier’s check for \$1,650.39. The lawsuit was dismissed on January 15, 2000.

Your conduct was in violation of the Code of Judicial Ethics, canons 1, 2A, 2B(2) and 4A, and the corresponding canons of the former Codes of Judicial Conduct between 1991 and 1995.

COUNT SIX

During approximately 1998-1999, on numerous occasions, you ordered a defendant to approach the bench where you then conducted a “smell test” of the defendant’s hair, and/or examined the defendant’s eyes. You would then announce, ostensibly based on such examination, that you knew the defendant was using drugs, and then you would order the bailiff to arrest the defendant. Pursuant to your order, the bailiff would handcuff the defendant and hold the defendant in custody for approximately a day and then release the defendant without booking the defendant or preparing any other arrest report.

Your conduct was in violation of the Code of Judicial Ethics, canon 1, 2A and 3(B)(4).

YOU ARE HEREBY GIVEN NOTICE, pursuant to Rules of the Commission on Judicial Performance, rule 118, that formal proceedings have been instituted and shall proceed in accordance with Rules of the Commission on Judicial Performance, rules 101-138.

Pursuant to Rules of the Commission on Judicial Performance, rules 104(c) and 119, you must file a written answer to the charges against you within twenty (20) days after service of this notice upon you. The answer shall be filed with the

Commission on Judicial Performance, 455 Golden Gate Avenue, Suite 14400, San Francisco, California 94102-3660. The answer shall be verified and shall conform in style to subdivision (c) of rule 15 of the Rules on Appeal, contained in the California Rules of Court. The Notice of Formal Proceedings and answer shall constitute the pleadings. No further pleadings shall be filed and no motion or demurrer shall be filed against any of the pleadings.

This Notice of Formal Proceedings may be amended pursuant to Rules of the Commission on Judicial Performance, rule 128(a).

BY ORDER OF THE COMMISSION ON JUDICIAL PERFORMANCE

DATED: 12/11/01

/s/
MICHAEL A. KAHN
CHAIRPERSON